

EXHIBIT B

(Madoff Profit Withdrawal Deposition Testimony Excerpts)

*** CONFIDENTIAL ***

Page 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

X

SECURITIES INVESTOR PROTECTION :
CORPORATION, :
Plaintiff-Applicant, :
-vs- : 08-01789 (SMB)

**BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC,**

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

*** CONFIDENTIAL ***

DEPOSITION OF BERNARD L. MADOFF

(Taken by the Customers)

Butner, North Carolina

June 15, 2016

June 15, 2016

Reported by: Lisa A. DeGroat, RPR
Notary Public

*** CONFIDENTIAL ***

Page 37

1 don't send me the profit withdrawals?

2 A. That's correct.

3 (MADOFF EXHIBIT 9 WAS MARKED FOR
4 IDENTIFICATION.)

5 BY MS. CHAITMAN:

6 Q. Let me show you what's been marked as
7 Exhibit 9, which is a little bit more legible. So
8 this is April 30th, 1990. And without going through
9 the same detail, this is essentially the same --

10 A. Yes.

11 Q. -- trading strategy; right?

12 So do you remember the time period when you
13 were executing this particular trading strategy?

14 MS. BROWN: Objection.

15 THE WITNESS: Do I remember the time
16 when it was --

17 BY MS. CHAITMAN:

18 Q. The -- the time period when you were using
19 that strategy?

20 A. Convertibles?

21 Q. Yeah.

22 A. Depending upon the account, but would have
23 been executing them certainly into the '90s.

24 Q. Okay. Now, with respect to the
25 transactions that -- what do you -- what do you

*** CONFIDENTIAL ***

Page 38

1 describe this strategy?

2 A. Convertible arbitrage.

3 Q. Convertible arbitrage. Okay. The -- were
4 the convertible arbitrage trades actually carried
5 out?

6 A. Yes.

7 Q. And were they carried out through Bear
8 Stearns?

9 A. No.

10 Q. How were --

11 A. We were -- we were a self-clearing firm
12 always. We never cleared through anyone in the
13 United States. We only cleared through a firm,
14 through Barclays Bank, in London, but that wouldn't
15 have been doing this kind of trading.

16 Q. Okay. Was -- was there a time period in
17 the '80s that you were doing business with Bear
18 Stearns?

19 A. Yes.

20 Q. Would you -- do you remember when that was?

21 A. We were doing business with everyone all
22 through -- through 2008.

23 Q. Okay.

24 A. And --

25 Q. Can you -- were you doing -- were you

*** CONFIDENTIAL ***

Page 39

1 having Bear Stearns execute the purchase of
2 convertible --

3 A. No.

4 Q. -- debentures?

5 A. We were probably the largest market-maker
6 and trader in convertible securities in the country,
7 you know, through the -- the entire period.
8 You know, I would say -- let's say from the --
9 certainly from the '80s right through 2008.

10 The -- the business we did with Bear
11 Stearns, as we did with Merrill Lynch and with
12 everybody else, was usually as a market-maker or
13 part of our proprietary trading department, would
14 have, you know -- might have been in convertibles.

15 It could have been in -- you know, we were
16 doing hundreds of thousands of transactions every
17 day. In spite of the fact that we never got caught,
18 like we weren't doing anything, because they
19 couldn't find confirmations.

20 We had -- we explained to them that the
21 industry stopped issuing confirmations, you know,
22 years ago. They seemed to have been dumbfounded by
23 that remark.

24 Q. The business that you did with Bear
25 Stearns, was it structured so that Bear Stearns

*** CONFIDENTIAL ***

Page 40

1 would buy the securities in its own name and would
2 lend you the -- the money to buy the securities, and
3 then when the transactions closed, there would be
4 a -- an accounting for the profits?

5 MS. BROWN: Objection.

6 THE WITNESS: I'm not sure I understand
7 the question.

8 BY MS. CHAITMAN:

9 Q. Okay. Did you instruct Bear Stearns to buy
10 securities positions for -- for you?

11 A. No.

12 Q. So can you just describe what those
13 transactions were that you did with Bear Stearns?

14 A. I -- we were a market-maker in 500
15 securities. Some of them were convertible. Some of
16 them were -- were common. They came to our -- our
17 market-making department.

18 And based upon what we were quoted in
19 NASDAQ, if it was a NASDAQ security, they would, you
20 know, ask for a bid or an offer on whatever they
21 were selling.

22 That was -- would have been referred to as
23 a wholesale transaction. Would not involve a
24 customer of ours. It might have been a customer of
25 Bear Stearns probably.

*** CONFIDENTIAL ***

Page 41

1 Q. So -- forgive me for being simplistic.
2 Bear Stearns would -- might have a customer, or it
3 might be for their own account?

4 A. Correct.

5 Q. They would have a block of stock? They
6 would ask you to purchase it?

7 A. Correct.

8 MS. BROWN: Objection.

9 BY MS. CHAITMAN:

10 Q. And -- and you -- and you would purchase
11 it?

12 MS. BROWN: Objection.

13 THE WITNESS: Depending upon which
14 department it came -- if it was a market-making
15 transaction, it would go into the firm's
16 market-making account.

17 You know, if it was -- you know, and
18 that's the only way that Bear Stearns would come
19 to us.

20 BY MS. CHAITMAN:

21 Q. Okay.

22 A. I'm not sure I understand where you're
23 going. So --

24 Q. No. I just want to get an understanding of
25 what the structure was of your dealings with Bear

*** CONFIDENTIAL ***

Page 42

1 Stearns.

2 A. The same as it was with everybody else, you
3 know, in the industry. Every other broker-dealer.
4 If it was coming through -- if it was, you know, a
5 security that we were a market-maker in, which was
6 500 different securities.

7 Q. And would -- who -- if you were purchasing
8 a large block of stock from Bear Stearns --

9 A. Uh-huh.

10 Q. -- where would the financing come from for
11 that?

12 MS. BROWN: Objection.

13 Helen, I think we're starting to go a
14 little outside the scope of the order. He's
15 saying that he didn't purchase it for customers.

16 MS. CHAITMAN: Well --

17 MS. BROWN: It was a wholesale
18 business.

19 MS. CHAITMAN: I'm not -- I'm not sure.

20 MS. BROWN: So I'm going to let you
21 permit it. Keep going forward.

22 MS. CHAITMAN: Yeah.

23 MS. BROWN: But I think we're treading
24 very close to getting outside of the scope of
25 the order.

*** CONFIDENTIAL ***

Page 43

1 BY MS. CHAITMAN:

2 Q. I -- with respect to the transactions we've
3 seen --

4 A. In convertible securities?

5 Q. On the customer statements.

6 A. Right.

7 Q. Your testimony is that these were positions
8 that you actually executed?

9 A. Correct.

10 MS. BROWN: Objection.

11 BY MS. CHAITMAN:

12 Q. Okay. And how did you execute the
13 transactions that -- that we've been reviewing on
14 these statements?

15 MS. BROWN: Objection.

16 THE WITNESS: Either we would go out
17 into the open market to buy them, you know, from
18 another dealer. It could have been Bear
19 Stearns, if, in fact, they made a market in that
20 security, or it could have been someone --
21 someone else, or it could have been somebody
22 coming in to us unsolicited, another dealer to
23 sell a security. I mean, that's what we did all
24 day long.

25 BY MS. CHAITMAN:

*** CONFIDENTIAL ***

Page 44

1 Q. And who were the people, if you recall,
2 during the 1980s who were executing these
3 transactions that we've just reviewed?

4 MS. BROWN: Objection.

5 THE WITNESS: Who would we call?

6 BY MS. CHAITMAN:

7 Q. Who were the people, if you recall, within
8 your organization who were doing this?

9 A. It would have been -- depending upon which
10 trader was making a market in that stock, it could
11 have been someone like, you know, a David Kugel. It
12 could have been someone like a Martin Joel. It
13 could have been any number of, you know, a hundred
14 traders that we had.

15 Q. So did -- how did it work? Did you assign
16 to traders the transactions with respect to certain
17 securities? How was that allocated among your --

18 A. Certain traders made a market in certain --
19 in various securities. Other -- there also were
20 times that we didn't make a market in that security.
21 That we just went out into the open market to buy.
22 It could have been any number of traders that --
23 that did that for us over the years.

24 Q. Okay. So --

25 A. Including myself.

*** CONFIDENTIAL ***

Page 45

1 Q. Okay. So I just want to be clear on
2 something. There's a -- there's been a public
3 perception --

4 A. Uh-huh.

5 Q. -- that there was a stone wall between the
6 17th floor, which handled the investment advisory
7 accounts, and the 18th and 19th floor.

8 A. The Chinese wall.

9 MS. BROWN: Objection.

10 BY MS. CHAITMAN:

11 Q. The Chinese wall. Okay.

12 A. It's referred to.

13 Q. Okay. But are you saying that the
14 investment advisory transactions that we've just
15 reviewed were executed by people on the 18th or 19th
16 floors?

17 MS. BROWN: Objection.

18 THE WITNESS: It depends. It depends
19 upon, again, whether we were a market-maker and
20 also the period of time. The -- the Chinese
21 wall went into existence in the '80s, and the --
22 the Chinese wall varied based upon what the SEC
23 requirements were with -- with the Chinese wall.

24 In other words, it became more specific
25 the later the period went. For example, once

*** CONFIDENTIAL ***

Page 46

1 you went into the '90s the Chinese wall was --
2 was, you know, in place.

3 When you're talking about doing
4 transactions in the '80s, it was -- that was
5 done, you know, by one -- you have to understand
6 we were one firm. There was no -- there was no
7 separation between the investment advisory, you
8 know, and the -- and the market-making side in
9 the beginning.

10 It was only -- it was all down under
11 Bernard L. Madoff Investment Securities. Even
12 the investment advisory form was filed -- the
13 ADD form was filed under Bernard L. Madoff
14 Investment Securities.

15 We structured the Chinese wall, as
16 required, to have different managers supervise
17 different departments. And then physically we
18 moved the whole advisory side down to the 17th
19 floor. That was in the '90s.

20 But it could have been any number of
21 people making -- you know, executing the
22 transaction, including myself, in these types of
23 convertibles. But it could have been any number
24 of traders that did it, or it could just be me
25 going out and buying the security.

*** CONFIDENTIAL ***

Page 47

1 BY MS. CHAITMAN:

2 Q. Okay.

3 A. To answer your question, which I think I
4 know where you're going, the convertible securities
5 transactions were all bought and sold. They were
6 not paper transactions, as opposed -- as opposed to
7 the split-strike transactions, which in the '90s
8 became just paper transactions, where we were
9 actually short.

10 You also have to understand one thing.
11 This is beyond the depth, for some reason, of Irving
12 Picard, his whole legal thing. No -- no remarks,
13 but -- but it's -- I was astounded of the lack of
14 understanding of -- of this, but the -- oh, I went
15 off track. The -- what was -- what --

16 MS. CHAITMAN: Can you read back where
17 he was? Just -- just read back his answer.

18 MS. BROWN: I just want to make sure
19 we're -- we're -- the testimony has to be
20 limited to profit withdrawals. So --

21 MS. CHAITMAN: Yeah, I want you --
22 we're focusing on these transactions that we've
23 just reviewed.

24 THE WITNESS: Okay.

25 (THE PREVIOUS ANSWER WAS THEN READ.)

*** CONFIDENTIAL ***

Page 48

1 THE WITNESS: Okay. Okay. I
2 understand. All right. All of our trading was
3 done as principal. You know, I had to explain
4 this, for some reason, to the SEC and to the
5 other people, the 20 some odd people who were
6 there at my proffer agreement, of what -- of
7 what that is.

8 When brokerage firms either buy or sell
9 as an agent, which means they go out into the
10 market, and they buy it from another broker, as
11 an agent, and then charge a commission or a
12 markup, or they trade as principal, which means
13 they go out into the market the same way and buy
14 it and sell it and mark it up or they short it.
15 They go short, the stock.

16 As -- as a market-maker -- which means
17 that we're selling stock to another
18 broker-dealer, like a Merrill Lynch or we're
19 selling it to John Q Public. We're making the
20 same transaction.

21 We're selling that stock as principal,
22 meaning that I either bought it in the
23 marketplace or I shorted it. Now, as a
24 registered market-maker, you're required by
25 regulation to at times short stock to a client

*** CONFIDENTIAL ***

Page 49

1 in order to be competitive in order to make a
2 two-sided market.

3 So I'm under an obligation, even though
4 I don't want to sell the security, to make my
5 market good, because I have a quoted market in
6 NASDAQ or on the pink sheets, depending upon the
7 time period.

8 And somebody comes in to buy stock or I
9 have a client that wants to buy stock, I have to
10 short the stock, which means that the client
11 still owns the stock.

12 The same way as if I had went out into
13 the market to bought it or I -- except that --
14 that it's my obligation to deliver that stock,
15 you know, in the future to that client if he
16 requires it or he wants to sell it and so on.
17 It's the same transaction.

18 Now, our practice, as most dealers,
19 like myself, in the industry, was to always
20 trade as principal. Particularly in stocks we
21 were a market-maker in. And the fact that we go
22 short a stock does not mean that the transaction
23 was not completed.

24 The reason I'm stressing that was
25 during the proffer agreement, the first thing

*** CONFIDENTIAL ***

Page 50

1 that the prosecutor jumped on was when I said
2 that -- going back even into the '70s I sold
3 stock short to a customer.

4 And he said, well, you mean you sold
5 stock that you didn't own to the customer? And
6 both myself and my attorneys were dumbfounded
7 with the question.

8 I don't know whether it was theater,
9 but from that remark was deduced that Madoff
10 never sold -- bought stock for -- actually
11 bought the stock that he sold to a customer.

12 When -- when other people, like other
13 attorneys in the industry, and I must have had
14 30 of them come down here in the past seven
15 years, were stunned at that kind of dialogue.

16 And they said that he couldn't have not
17 been -- he couldn't have not known that. This
18 must have been a theater to just build a case,
19 which I didn't know why anyone had built. I had
20 admitted what I did. All right.

21 BY MS. CHAITMAN:

22 Q. Okay. So the --

23 A. All of the arbitrage transactions that
24 you're talking about, the Bleckers or for anybody
25 else, were actual purchases and sales of the

*** CONFIDENTIAL ***

Page 51

1 securities, either as agent or as principal, but
2 that doesn't matter which way it was done. It was
3 an actual transaction, where money changed hands.

4 Q. Okay.

5 A. As opposed to the split-strike, where it
6 was done -- it was done the same way, but I never
7 reflected those short positions on the books. And
8 there was my problem.

9 There was nothing wrong with me shorting
10 stock to clients, and -- even if it was 65 billion
11 dollars worth of shorting them. Where I went wrong
12 and violated the law was not reflecting those
13 liabilities on my books and records. That's it in a
14 nutshell.

15 Q. Okay. Just sticking with the profit
16 withdrawals, which is all I'm permitted to ask you
17 about --

18 A. Okay.

19 Q. -- with respect to the convertible
20 debentures. Were there -- are there any documentary
21 records that you can recall that would establish
22 what you're saying, that these were actual
23 transactions?

24 In other words, for the period from, say,
25 1981 through, say, 1990?

*** CONFIDENTIAL ***

Page 52

1 A. Yes. You -- you --

2 Q. Let me just finish. 1995, say.

3 A. Right.

4 Q. Are there any documentary records which
5 would prove what you're saying?

6 A. They should all have been available, unless
7 they were, you know, destroyed or in part of the
8 record-retention process. There would be blotters.
9 There would be cash receipts.

10 Depending upon whether the transaction went
11 through the clearing corporation or whether it was
12 just an over the -- over-the-window transaction, but
13 there would be debits and credits in the firm's bank
14 account.

15 Now, the convertible securities all went
16 through the Bank of New York. They did not go
17 through, to my recollection, JPMorgan. Those were
18 all -- all the investment advisory transactions,
19 which these would not be considered, going back to
20 the '80s, went through either Bank of New York,
21 Banker's Trust.

22 Man, we had -- we had a lot of banks, you
23 know. There would -- there should be -- just as
24 there were, you know, transactions that went through
25 the clearing corp, which would have been NSCC or DTC

*** CONFIDENTIAL ***

Page 53

1 in the later years.

2 Q. Okay. Now, the -- this strategy with the
3 convertible debentures continued into the 1990s?

4 A. Uh-huh.

5 Q. And, as I understand it, it existed at the
6 same time as the split-strike conversion strategy?
7 There were some customers --

8 A. Right.

9 Q. -- who were in split-strike, and some were
10 in the --

11 A. Correct.

12 Q. -- subordinated debentures?

13 MS. BROWN: Objection.

14 BY MS. CHAITMAN:

15 Q. Are you saying that at the same time that
16 you were not executing the transactions in the
17 split-strike accounts, you were executing the
18 transactions in the subordinated debenture accounts?

19 A. Yes.

20 MS. BROWN: Objection.

21 Go ahead.

22 THE WITNESS: Yes, but you -- you --
23 you have to understand that these transactions
24 could have been done as, you know, actually in
25 the marketplace or from the firm's trading or

*** CONFIDENTIAL ***

Page 54

1 investment accounts.

2 In other words, it's -- it's not just a
3 matter of there were two -- as I said before,
4 there were ways that we could go out, and if we
5 decided we wanted to buy and sell a security for
6 a client doing a convertible arbitrage or for an
7 equity transaction, we would go out into the
8 marketplace and buy that securities, or the
9 marketplace would come to us and sell us that
10 security.

11 All right. Or we would go short the
12 stock from the firm's trading or investment
13 account to the client. It's still the same
14 transaction.

15 All right. There's still an entry on
16 the books. It would look the same. It would
17 just be carried over into a long and short
18 position. From the customer's standpoint it's
19 totally the same.

20 BY MS. CHAITMAN:

21 Q. Okay. So forgive me for going over this
22 again, but I just want to be clear on it. If -- if
23 we wanted to find the documentary evidence of
24 this -- I mean, just let's -- let's be concrete.

25 If I look at -- let me just take one of

*** CONFIDENTIAL ***

Page 55

1 these that's legible. If -- if you'd be good enough
2 to look at Exhibit 4 for a second.

3 A. Uh-huh.

4 Q. Okay. So this is 12/31/85.

5 A. Right.

6 Q. If I wanted to find the documentary
7 evidence of the --

8 A. You would have a very -- this -- this
9 record would probably not be retained. It's an '85
10 transaction.

11 Q. Okay. So there wouldn't be any place I
12 could find it?

13 A. No.

14 Q. And of the people who were working for you
15 at the time who were the people that I would have to
16 talk to who would possibly have executed these
17 transactions?

18 A. It might have been myself. It might have
19 been -- in '85 it could have been David Kugel. It
20 could have been Martin -- well, Martin Joel was
21 dead. I don't remember the name -- the names of
22 some of the other trade -- traders.

23 Q. Okay. And if we go a little bit further
24 along, like in, let's say, 1990.

25 A. As a general rule, you would -- the firm

*** CONFIDENTIAL ***

Page 56

1 would not -- and I would -- you know, you'd have to
2 ask the trustee. As a general rule, all records
3 were the past six years, which is their requirement
4 or -- or destroyed, with the exception of customer
5 transactions.

6 As I said, we kept those longer, because
7 the clients, particularly the individual clients
8 that we had, for some reason, could never find their
9 monthly statements for their tax returns and so on.

10 So we would constantly get -- as all
11 brokers did, we'd get phone calls from an account,
12 like the Bleckers, saying, I have a tax audit, and I
13 need to, you know, find my cost basis on a
14 particular security. So we typically kept those --
15 those records longer.

16 But as far as Wall Street's records, nobody
17 kept records past -- as the same reason the banks
18 don't keep the records. Six years is the record
19 retention period.

20 After that, they're automatically supposed
21 to be destroyed. And that includes the -- by the
22 way, to correct that, that would include microfiche,
23 unless it was for clients. But the counter signs of
24 broker-dealers don't.

25 As I said before, the -- the industry

*** CONFIDENTIAL ***

Page 57

1 requested the SEC to change their requirements,
2 which they, in fact, did from pressure in the
3 industry to not produce hard copy records with each
4 other, with brokerage firms trading amongst
5 themselves.

6 The requirement that you had -- you had to
7 be able to produce them upon an examination request
8 within 48 hours, but nobody kept records past six
9 years. It would be impossible to do it.

10 Q. But you would scan the records and keep
11 them on computer?

12 MS. BROWN: Objection.

13 THE WITNESS: Every -- to my knowledge,
14 everything would have been -- after six years,
15 we had no records.

16 BY MS. CHAITMAN:

17 Q. Okay.

18 A. Except you would find client confirmation
19 in the statement records, but not, you know, what's
20 called street records. Meaning other brokerage
21 firms trading with each other, even in
22 clearinghouses.

23 Q. Okay. These -- these records --

24 A. Those are customer statements.

25 Q. These -- these were produced by the

*** CONFIDENTIAL ***

Page 58

1 trustee.

2 A. Okay.

3 MS. BROWN: Objection.

4 BY MS. CHAITMAN:

5 Q. Going back to '85?

6 A. Right.

7 Q. So --

8 A. Yeah. Those -- as I said, those
9 statements, you would have some, because they
10 were -- they were customer activity. I doubt
11 whether you would be able to find counter signed
12 with other brokerage firms that -- dating back that
13 long.

14 Q. Okay. Can you just --

15 A. I -- I want to read --

16 Q. Go ahead.

17 A. -- something into the record, which may be
18 beneficial to you or not. I don't know. But the --
19 what was amazing to me and to a whole host of other
20 attorneys that came here and went through the same
21 process that we're going through, the -- the fact
22 that you can't produce going back whatever the
23 period of time is records that will research
24 transactions that -- you know, that would verify
25 that a transaction was done.

*** CONFIDENTIAL ***

Page 59

1 According to the trustee and the prosecutor
2 at the time, meant that the transaction never
3 occurred. But other attorneys pointed out and said,
4 well, wasn't those transactions, you know -- you
5 know, gone -- didn't they go through the clearing
6 corporation? Weren't there debit and entries in
7 checking accounts and so on?

8 Those transactions were reported to -- to
9 the regulators, to FINRA, or we reported those
10 transactions on a daily basis. Weren't those debits
11 and credits -- you know, weren't they reflected
12 anywhere? Wasn't there money changing hands?

13 You know, wasn't there a continuous net
14 settlement with the banks for the clearing
15 organizations wanted to get paid for securities back
16 and forth?

17 And they said, of course.

18 Well, doesn't that demonstrate the fact
19 that the transactions did take place? And I had to
20 explain what a continuous net settlement was. Now,
21 a continuous net settlement was when you buy stock
22 in a marketplace.

23 I may go out and buy the stock for Blecker,
24 let's assume, if it was a regular equity from a
25 Merrill Lynch. All right. I may buy it from five

*** CONFIDENTIAL ***

Page 60

1 other brokerage firms.

2 The clearing corporation nets all of those
3 transactions overnight in a -- in what's called a
4 continuous net settlement, and -- and I get -- my
5 contract winds up being with a broker that has
6 nothing to do with Bear Stearns and Merrill Lynch.
7 It might be Credit Suisse or something of that sort.

8 Q. Uh-huh.

9 A. It's called a continuous net settlement.
10 They net all of the buys and sells, and they just
11 ask the broker for a money difference. So I could
12 do literally a billion dollars worth of purchases
13 and sales and wind up with literally \$100,000 net
14 credit or a debit, depending upon the transactions.
15 That's the way the industry runs.

16 Q. And would -- were there different clearing
17 firms that you used for various kinds of --

18 A. It wasn't --

19 Q. -- transactions?

20 A. They were not clearing firms. They were
21 other counterparties of the brokerage firm. We
22 cleared the transaction ourself, but we bought, as
23 did everybody else.

24 When you say a clearing firm, it means that
25 you had no back office capability to generate

*** CONFIDENTIAL ***

Page 61

1 confirmations or -- or no operations departments --

2 Q. Uh-huh.

3 A. -- and so on. We had -- from the day we
4 opened up our doors in 1960 we self-cleared all of
5 our transactions and continued that through 2008.

6 MS. CHAITMAN: Okay. All right. If I
7 can just take a five-minute break.

8 THE WITNESS: I'll tell you what, I --

9 THE VIDEOGRAPHER: Going off the
10 record. The time is 10:03.

11 (RECESS FROM 10:03 A.M. TO 10:15 A.M.)

12 (MADOFF EXHIBITS 10 AND 11 WERE MARKED
13 FOR IDENTIFICATION.)

14 THE VIDEOGRAPHER: Back on the record.
15 The time is 10:15.

16 MS. CHAITMAN: I want to show you what
17 I've marked as Exhibit 11.

18 MS. VANDERWAL: Are you sure it's not
19 10?

20 MS. CHAITMAN: What did I do with 10?
21 Let's see.

22 MS. BROWN: I think the last one you
23 marked -- you didn't use Exhibit 8, and then you
24 marked Exhibit 9.

25 MS. CHAITMAN: Thank you. Okay. So

*** CONFIDENTIAL ***

Page 62

1 10 -- yeah. Well, thank you for correcting me.

2 This is Exhibit 10.

3 BY MS. CHAITMAN:

4 Q. So, Mr. Madoff, is it fair to say that
5 these are the same kinds of transactions that we've
6 already reviewed this morning?

7 A. Yes.

8 Q. So this is that same trading strategy?

9 A. Correct.

10 Q. And this is 12/31/90?

11 A. Uh-huh.

12 Q. And is it your testimony that as of
13 12/31/90 these transactions were actually executed?

14 A. Correct.

15 Q. Okay. And these were executed by the
16 traders on the 18th and 19th floors?

17 MS. BROWN: Objection.

18 THE WITNESS: Yes.

19 BY MS. CHAITMAN:

20 Q. Now, if I can show you what I've marked as
21 Exhibit 11, and we're just going to -- so this is --
22 the Madoff 11 is dated 5/31/95. So we've skipped --

23 A. Right.

24 Q. -- several years. Is this basically the
25 same strategy, the same trading strategy?

*** CONFIDENTIAL ***

Page 63

1 MS. BROWN: Objection.

2 THE WITNESS: Yes.

3 BY MS. CHAITMAN:

4 Q. And as of May 31, 1995 were these
5 transactions actually executed by the people on the
6 18th and 19th floors?

7 MS. BROWN: Objection.

8 THE WITNESS: There's also the 17th
9 floor. So during that period, in '95, the
10 seventh -- the 17th floor went into existence in
11 '92, I believe, or '93, something like that.

12 BY MS. CHAITMAN:

13 Q. So were these -- were these transactions --
14 transactions that are reflected here actually done?

15 MS. BROWN: Objection.

16 THE WITNESS: After '90 -- after '92,
17 things got discombobulated. So I can't -- I
18 can't say yes or no on that after '92.

19 BY MS. CHAITMAN:

20 Q. Okay. So do you have a -- when you say,
21 "after '92," do you have some way that you can peg
22 it to '92? I just -- I just want to have your
23 testimony as to what the cutoff was.

24 When was -- when were the trades actually
25 executed on the convertible debenture strategy?

*** CONFIDENTIAL ***

Page 64

1 A. I can't say specifically. Certainly prior
2 to '92 they were. Before it began in '92 --

3 Q. So --

4 A. -- partially.

5 Q. If we said -- if we said January 1st, 1992,
6 everything before that was --

7 A. Should have been --

8 Q. -- was executed?

9 A. -- executed. Correct.

10 Q. Okay. Are you comfortable with that as --

11 A. As comfortable as I can be, you know, now.

12 Q. Okay. Why -- why do you peg it to 1992?

13 A. Because post '92 was when I started doing
14 the business in the split-strike, you know, or not
15 doing business in the split-strike.

16 Q. Okay. Now, have you ever discussed with
17 Irving Picard the profit withdrawal trades?

18 A. No.

19 Q. Did you -- did you ever meet with Irving
20 Picard?

21 A. Once. There -- during the proffer
22 agreement, which is the first day after I was
23 arrested. To my knowledge, that was the last time I
24 spoke to him or saw him.

25 Q. Okay. Did you meet with anyone who either

*** CONFIDENTIAL ***

Page 65

1 represented him as a lawyer --

2 A. Yes.

3 Q. Who?

4 A. David Sheehan and a whole group of lawyers
5 came down here, interviewed me for two days. I
6 don't remember the time period. Probably within a
7 few -- maybe two years after I came here, I guess it
8 was, or the year after I came here.

9 Q. Okay.

10 A. Which was, you know, in 2009.

11 Q. 2009, when you came here?

12 A. Yeah.

13 Q. So it would have been in 2010?

14 A. Probably. Something like that.

15 Q. Okay. And did they ask you whether the
16 profit withdrawal transactions were actually
17 executed?

18 A. Not to my knowledge. There was actually --
19 wait a minute. There was one -- there was one
20 question-and-answer exchange that happened relating
21 to a scrap of paper that they produced that had some
22 scribbling on it from one of my traders. I think it
23 was David Kugel, I think they said.

24 It was a conversion instruction. And I
25 remember this, because it was, what they thought,

*** CONFIDENTIAL ***

Page 66

1 was some sort of smoking gun. What they did was
2 they showed me a piece of paper and my attorneys who
3 were here at the time, Ike Sorkin.

4 And it gave the formula a particular
5 convertible bond or preferred. I don't remember
6 which it was. What that convertible bond was
7 convertible into the number of shares. It was --

8 And they asked me what that was, and I
9 said, that is instructions of what -- how to convert
10 what -- what a convertible bond equal the number of
11 shares.

12 And they asked me if I knew who wrote this.
13 And I said, it looks like David Kugel's handwriting.
14 And they asked me what it was. And I said, that
15 would be instructions to one of the operations
16 people to -- what -- how to convert a particular
17 security.

18 And from that he tried to, you know, say
19 that that was instructions to create a transaction.
20 And I said that you would probably find a hundred of
21 those types of instructions in the records if you
22 looked at them.

23 And that was instructions that the trader,
24 David Kugel at that time, would have to have been a
25 trader in that particular bond or preferred, is

*** CONFIDENTIAL ***

Page 67

1 instructing probably Jodi Crupi or one of the other
2 people, you know, in the operations department how
3 to allocate, you know, a particular security,
4 convert it.

5 I said, you know, if you went to any back
6 office, you would see instructions like that, you
7 know. I didn't understand why he felt that that was
8 important one way or the other, but he -- he was --
9 I guess he -- where he was going was this was his
10 evidence that the -- that the transaction was just a
11 fictitious transaction, made up.

12 That was the end of that. I started
13 laughing. My attorney started to laugh. And there
14 was, you know, a lot of confused looks from the
15 lawyers, the other six attorneys that were present
16 at that meeting.

17 That was the only thing -- that was the
18 only -- that was the only conversation we had,
19 period, about anything relating to any of this.

20 Q. Did anyone on behalf of the trustee ask you
21 what your policy was with respect to requiring
22 letters from clients asking for withdrawals?

23 A. I don't recall anything coming up about
24 that. No.

25 MS. CHAITMAN: Okay. All right. I